

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

SEPTEMBER 1996 SESSION

FILED
October 17, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLEE,)
)
 v.)
)
 CARL VICTOR RANDOLPH,)
)
 APPELLANT.)

No. 02-C-01-9510-CC-00320
Madison County
J. Franklin Murchison, Judge
(Revocation of Probation)

FOR THE APPELLANT:

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OF COUNSEL:

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Carl Victor Randolph, appeals as of right from a judgment of the trial court revoking his judicial diversion,¹ sentencing him to an effective sentence of four (4) years, and requiring him to serve the sentences in the Department of Correction. In this Court, the appellant contends “[i]t would be more consistent with the principles of sentencing to leave him on probation, intensive probation, or community corrections, rather than send him to the penitentiary.” The judgment of the trial court is affirmed.

The state established the appellant failed to report to the probation officer, failed to pay the court costs, and failed to perform the community service as ordered by the trial court. The trial court also found the appellant did not qualify for judicial diversion because he had been convicted of Class A misdemeanors,² and these convictions were not brought to the attention of the trial court when the appellant was placed on judicial diversion. While on judicial diversion, the appellant was convicted of driving while his license was in a revoked status.

This Court is of the opinion the trial court did not abuse its discretion by revoking the appellant’s judicial diversion. Based upon a de novo review of the record, this Court is of the opinion the appellant has failed to overcome the presumption of correctness afforded the findings of fact made by the sentencing court.³

JOE B. JONES, PRESIDING JUDGE

¹The order of the trial court refers to judicial diversion as “deferred probation.”

²The appellant had been convicted of carrying a dangerous weapon and assault. He also had been convicted of two counts of public intoxication. At the revocation hearing, he admitted to being convicted of driving while under the influence of an intoxicant.

³Tenn. Code Ann. § 40-35-401(d).

CONCUR:

DAVID H. WELLES, JUDGE

JERRY L. SMITH, JUDGE